

**Remarks**

The Office Action mailed June 24, 2003, has been carefully reviewed and the foregoing remarks are made in consequence thereof.

Claims 1-43 are pending in this application. Claims 1-43 stand rejected.

The rejection of Claims 1-43 under 35 U.S.C. § 112 is respectfully traversed.

Applicant respectfully submits that the Section 112 rejections of Claims 1-43 is improper and further submits that the specification as filed meets the written description, the enablement and best mode requirements of 35 U.S.C. § 112, first paragraph, and further meets the requirements of 35 U.S.C. § 112, second paragraph by particularly pointing out and distinctly claiming the material regarded as the invention, as applied to one of ordinary skill in the art.

Applicant also respectfully submits that the June 24, 2003 Office Action does not explain which paragraph of Section 112 is being applied to the application, nor is there an identification of the subject matter within the application considered to be deficient under Section 112.

Applicant respectfully requests an explanation of the Section 112 rejection, including an indication of the portions of Section 112 being applied against the pending application and a listing of the application wording giving rise to the rejection. Without such an explanation, Applicant is unable to ascertain the scope of the rejection and provide a proper response.

For the reasons set forth above, Applicant respectfully requests that the Section 112 rejections of Claims 1-43 be withdrawn.

The rejection of Claims 1-43 under 35 U.S.C. § 102/103 as being unpatentable over the prior art or the IDS is respectfully traversed.

Applicant respectfully submits that the Section 102/103 rejection of Claims 1-43 is improper, as Applicant has not been provided with the specific portion of Section 102 alleged to anticipate the claims. In addition, no specific art has been identified to the Applicant, nor has an explanation been provided regarding the application of specific cited art to the recitations of the claims.

The mere assertion that the subject matter of Claims 1-43 is unpatentable over the prior art or the IDS does not support a prima facie rejection. Rather, each allegation of what is anticipated or obvious must always be supported by citation to some reference in the pertinent art. Then, the Applicant is to be given an opportunity to challenge the correctness of the assertion or the repute of the cited reference(s). As stated above, Applicant has not been provided with the citation to any particular piece of cited art supporting the rejection of Claims 1-43. The Section 102/103 rejection, therefore, fails to provide the Applicant with a fair opportunity to respond to the rejection, and fails to provide the Applicant with the opportunity to challenge the correctness of the rejection.

Applicant further respectfully submits that the Examiner's Section 102/103 rejection of the presently pending Claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify the art in the IDS, specifically, Figure 5 of Johnson, Figures 6 and 7 of Kawabata, Figure 2 of Wilsford, Figure 21 of Gombrich, Figure 4 of Perelli, Figure 1 of Williams, Figure 4 of Pratt, and Figure 5 of Curkendall. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. The required teaching, suggestion and incentive supporting a combination is absent here. None of the art mentioned in the Office Action teach or suggest the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicant respectfully submits that it would not be obvious to one skilled in the art to combine this art because there is no motivation to combine the references suggested in the art. Rather, the Examiner has not identified any prior art that teaches or suggests combining these pieces of prior art.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicant's disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any

reasonable expectation of success has been shown. Specifically, the Examiner has not identified any prior art that teaches or suggests a reasonable expectation of success or motivation in combining the references.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 102/103 rejections are apparently based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention.

Since there is no teaching, suggestion, or motivation in the cited references for the combination recited in Claims 1-43, the rejection of Claims 1-43 appears to be based on impermissible hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason, Applicant requests that the 35 USC § 102/103 rejections of Claims 1-43 be withdrawn.

For the reasons set forth above, Applicants respectfully request that the Section 102/103 rejections of Claims 1-43 be withdrawn.

In view of the foregoing, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



Robert E. Slenker  
Registration No. 45,112  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
(314) 621-5070